

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 92787-001-SF

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 28th day of October 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On August 21, 2008, XXXXX, on behalf of his minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on August 28, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on September 11, 2008.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan

(BCBSM) through the State of Michigan PPO plan, a self-funded account. Coverage is governed by the language of BCBSM's *Your Benefit Guide* (the benefit guide).

The Petitioner, born May 28, 2003, has been diagnosed with pervasive development disorder. He received applied behavior analysis (ABA) treatment at XXXXX Hospital from April 2, 2007, through June 29, 2007. The cost of this care was \$8,835.00.

Payment for the Petitioner's ABA treatment was denied by BCBSM as experimental and therefore not covered under the certificate. The Petitioner appealed. After a managerial-level conference, BCBSM did not change its decision and issued a final adverse determination dated July 24, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's ABA treatment?

IV ANALYSIS

Petitioner's Argument

The Petitioner has autism spectrum disorder and disruptive behavior disorder. His verbal communication is quite limited. Given his complex clinical presentation, intensive treatment using applied behavior analysis (ABA) was prescribed.

The Petitioner's pediatrician believes that ABA is the "gold standard treatment" for children with autism. She indicated that this care, to be effective, must be provided in an intensive manner and that XXXXX Hospital's XXXXX Center provided the Petitioner and his family with the intensive ABA therapy needed to give him an improved chance to function independently.

The Petitioner argues that his ABA was medically necessary and a covered benefit under the certificate. He also believes that BCBSM should cover his ABA treatment.

BCBSM's Argument

BCBSM said that it did not cover the Petitioner's ABA services because it considers ABA to be investigational and experimental and investigational services are excluded on page 66 of the benefit guide.

BCBSM defines autism as a developmental disorder of brain function classified as one of the pervasive developmental disorders. These disorders can vary widely in severity and symptoms; classical autism is characterized by impaired social function, problems with verbal and nonverbal communications and imagination, and unusual or severely limited activities and interests. BCBSM says ABA is considered a behavioral therapy that attempts to reduce disruptive behavior and improve communication skills and social adjustment.

BCBSM believes that the medical literature and clinical experience is inconclusive as to whether ABA is safe or effective for treatment for any condition. Additionally, the certificate indicates that a procedure is considered experimental even if it has been shown to be safe and effective treatment for some conditions but there is still inadequate medical literature or clinical experience to support its use in the Petitioner's condition. BCBSM says it appears to be undisputed that ABA is safe but says doubts remain as to the effectiveness of the treatment for autism.

Therefore, BCBSM believes that the Petitioner's ABA therapy is not a covered benefit and it is not required to pay for it.

Commissioner's Review

The question of whether ABA therapy is investigational or experimental for treatment of the Petitioner's condition was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is board certified in pediatric neurology and has been in active practice for more than 15 years.

The IRO report said:

The MAXIMUS physician consultant explained that applied behavioral analysis is an intensive behavioral therapy, which is psycho-educational in

nature. However, the MAXIMUS physician consultant also explained that the effectiveness of applied behavioral analysis has not been proven in randomized trials involving large numbers of patients. The MAXIMUS physician consultant indicated that the evidence supporting this form of treatment rests on a small number of children with autism who were treated with applied behavioral analysis and followed over several years. The MAXIMUS physician consultant also indicated that about half of these children improved and maintained that improvement over time. The MAXIMUS physician consultant further indicated that these studies were only quasi-randomized. The MAXIMUS physician consultant noted that subsequent studies did not show as promising results as the initial studies. [Citations omitted]

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that the applied behavioral analysis services that the [Petitioner] received from 4/02/07 to 6/29/07 were investigational for treatment of his condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case. Therefore, the Commissioner accepts the IRO reviewer's conclusion and finds that ABA therapy is experimental for treatment of the Petitioner's condition and is therefore not a covered benefit under the certificate.

V ORDER

Respondent BCBSM's July 24, 2008, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's ABA services because they are considered investigational for treatment of his condition and therefore excluded under the terms of the certificate.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review

should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.